

FILED

MAY 12 2014

A.C.J.C.

IN THE MATTER OF

MELANIE D. APPLEBY,
JUDGE OF THE SUPERIOR COURT

SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO. ACJC 2013-037

STIPULATIONS OF FACT

Tracie H. Gelbstein, Disciplinary Counsel, Advisory Committee on Judicial Conduct ("Presenter"), and Superior Court Judge Melanie D. Appleby ("Respondent"), through counsel, Guy P. Ryan, Esq., hereby enter into the following stipulations:

COUNT I

1. Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1994.
2. At all times relevant to this matter, Respondent served as a Judge in the Superior Court of New Jersey assigned to the Family Part in the Ocean County Vicinage.
3. Respondent married Christopher Donohue ("Donohue") in 1987.
4. The marriage between Donohue and Respondent ended in divorce in 1999.
5. While married, Respondent and Donohue had two children.
6. In the first week of May 2012, Respondent received a letter dated May 3, 2012 from Donohue wherein he requested

voluntary termination of his child support obligations ("Child Support matter").

7. After reviewing the letter, Respondent spoke to her judicial secretary about her concern and anxiety over the Child Support matter and her desire to obtain legal representation.
8. Respondent's secretary recommended she reach out to Frank A. Louis ("Louis") of the law firm Louis & Judge.
9. Respondent was familiar with Louis as a local family law attorney.
10. Respondent knew at the time of her secretary's recommendation that Louis had cases assigned to her court.
11. Respondent agreed to meet with Louis about the Child Support matter.
12. Her secretary arranged for an initial meeting between Respondent and Louis to take place at the Ocean County Courthouse.
13. On May 8, 2012, Respondent met with Louis in her chambers to discuss his representation of her in the Child Support matter.
14. Respondent had the May 3, 2012 letter with her at the meeting with Louis.
15. Respondent and Louis discussed Donohue's letter and the details of her divorce at the meeting.

16. At that meeting, Louis raised concerns to Respondent about a conflict of interest created by his representation of Respondent in the Child Support matter.
17. Louis told Respondent that while he wanted to help her with the Child Support matter, he did not want his assistance to result in his name being added to Respondent's conflict list.
18. Louis concluded the initial meeting by telling Respondent "let me see if I can work something to see whether I can still appear in front of you."
19. Thereafter, Respondent, at Louis's request, sent him the property settlement agreement between Respondent and Donohue.
20. Respondent also communicated with Louis through email and telephone calls regarding the Child Support matter.
21. At no time did Respondent speak with any other attorney regarding the representation of her interests in the Child Support matter.
22. Louis drafted a response to Donohue's May 3, 2012 letter that set forth Respondent's legal position ("Draft Letter").
23. On June 21, 2012, Respondent received from Louis a copy of the Draft Letter for her review and approval.

24. Respondent believed that Louis had prepared the Draft Letter.
25. The Draft Letter was not typed on Louis's law firm stationery. Instead, it was on blank paper and did not contain an address, a complimentary close, or a signature line.
26. At the top of the first page of the Draft Letter were the words, typed in capitalized and bolded letters, "**BIEL LETTERHEAD.**"
27. Respondent, who was not familiar with Mark Biel or his firm, never inquired about the meaning of "**BIEL LETTERHEAD**" when she reviewed and commented on the Draft Letter.
28. On June 22, 2012, Respondent emailed Louis her edits to the Draft Letter, and a note that summarized those edits and approved the letter.
29. On June 26, 2012, Respondent received from Louis a copy of a letter sent to Donohue that responded to the May 3, 2012 letter ("Final Letter").
30. The Final Letter incorporated Respondent's edits, but it was printed on the law firm stationery of "Biel, Zlotnick & Feinberg."
31. The Final Letter, which contained a complimentary close and signature line, was purportedly signed by the named partner "Mark Biel."

32. Respondent had never met with Biel, and had never spoken to Biel about her legal interests in the Child Support matter.
33. Respondent had never sent to Biel any documents related to the Child Support matter.
34. Respondent did not communicate with Biel after receiving the Final Letter that he purportedly signed on her behalf.
35. On August 13, 2012, Respondent received from Louis a copy of a letter sent to Catherine Tambasco, Esq., the attorney that represented Donohue in the divorce matter, indicating that Louis would be representing Respondent in the Child Support matter.
36. Respondent admits that she created a conflict of interest by communicating with Louis about the Child Support matter and accepting Louis's assistance to represent her legal interests therein.

COUNT II

37. Louis represented the defendant in Cornick v. Cornick, Docket No. FM-15-557-12W ("Cornick matter") that was filed in Ocean County and assigned to Respondent.
38. On June 19, 2012, Louis appeared before Respondent in Ocean County Court for an uncontested divorce hearing in the Cornick matter.

39. At that June 19 appearance, Respondent heard from Louis and opposing counsel, and took testimony from the parties regarding a settlement agreement.
40. Upon consideration of the testimony, Respondent determined that the parties' settlement agreement was voluntary and knowing, and entered a Final Judgment of Divorce. Respondent made no findings of fact other than that the parties entered into the settlement agreement knowingly and voluntarily.
41. Louis represented the plaintiff in the matter of Kelly v. Kelly, Docket No. FM-15-798-12W ("Kelly matter") that was filed in Ocean County and assigned to Respondent.
42. On July 17, 2012, Louis and opposing counsel appeared before Respondent in her chambers for a conference in the Kelly matter.
43. After the conference, Respondent entered a consent order referring the Kelly matter to a mediator for review and mediation of all issues in the case.
44. The following day, on July 18, 2012, Louis wrote to Respondent to request that she review, execute and file with the Superior Court a consent order in the Kelly matter for the release of defendant's personnel file.
45. In that same letter, Louis also requested Respondent to review, execute and file with the Superior Court a proposed

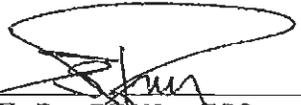
form of Protective Order For Medical Records of the defendant, allowing for production and protection of medical records during discovery.

46. On July 20, 2012, Respondent entered the order for the release and protection of defendant's medical records.
47. On July 20, 2012, Respondent also entered the consent order for release of defendant's personnel file.
48. On August 24, 2012, Louis wrote to opposing counsel in the Kelly matter advising that he was "now in conflict with Judge Appleby."
49. On September 4, 2012, Respondent sent a memo to her Assignment Judge advising that she had a conflict with Louis and his law firm, and requested that Louis be added to her list of conflicts.
50. Respondent admits that she engaged in a conflict of interest by failing to immediately disqualify herself from the Cornick matter and the Kelly matter in violation of Canon 3C(1) of the Code of Judicial Conduct.



TRACIE H. GELBSTEIN, ESQ.
Presenter

DATED: May 12, 2014



GUY P. RYAN, ESQ.
Counsel for Respondent

DATED: May 9, 2014